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Attorneys for Plaintiff
ATI INDUSTRIES, INC.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ATI INDUSTRIES, INC.,

Plaintiff,

v.

ART AND FRAME MART CORPORATION; DOES 1-10; and ROES 1-100,

Defendants.

CASE NO. 08-CV-1296 IEG (RBB)

REQUEST TO ENTER DEFAULT

TO: THE CLERK OF THE ABOVE-ENTITLED COURT

Plaintiff, ATI INDUSTRIES, INC. ("ATI") requests that the Clerk of the above-entitled Court enter default in this matter against Defendant ART AND FRAME MART CORPORATION on the ground that it has failed to appear or otherwise respond to the Complaint or First Amended Complaint within the time prescribed by the Federal Rules of Civil Procedure.

The Declaration of Thomas W. Ferrell in support of the Request To Enter

Default and documents in the Court's file reveal: ATI filed its Complaint on July 18, 2008 and personally served the Defendant's President at the Defendant's headquarters in Upland, California on July 21, 2008. Defendant's deadline to respond to the Complaint was August 11, 2008. ATI filed its First Amended Complaint on July 30, 2008 and served it on Defendant's President by U.S. mail dispatched on July 30, 2008 addressed to Defendant's headquarters in Upland California. Defendant's deadline to respond to the First Amended Complaint was August 22, 2008. Defendant has not answered or otherwise responded to either Complaint.

DATED: August 27, 2008

HIGGS, FLETCHER & MACK LLP

By: *Thomas W. Ferrell*
THOMAS W. FERRELL
Attorneys for Plaintiff
ATI INDUSTRIES, INC.

RE: *ATI Industries, Inc. v. Art and Frame Mart Corporation, et al.*

VENUE: United States District Court – Southern District of California

CASE NO.: 08-CV-1296 IEG (RBB)

PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of eighteen (18) years and not a party to the within action; my business address is: 401 West A Street, Suite 2600, San Diego, CA 92101. On August 27, 2008, I served the within documents, with all exhibits (if any):

REQUEST TO ENTER DEFAULT

☐ **(BY ELECTRONIC SERVICE)** I am familiar with the United States District Court, Central District of California's practice for collecting and processing electronic filings. Under that practice, documents are electronically filed with the Court. The Court's CM/ECF system will generate a Notice of Electronic Filing (NEF) to the filing party, the assigned judge, and any registered users in the case. The NEF will constitute service of the document. Registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities.

☒ **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at San Diego, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Joseph Nazar Art and Frame Mart Corporation 521 Mountain Avenue, Unit E Upland, CA 91788	Telephone: (877) 322-2100 Facsimile: (909) 373-0383

Jeff LeBlanc Attorney at Law 1005 N. Centre Ave., Suite 12100 Ontario, CA 91764	Telephone: (909) 949-2227 Facsimile: (909) 985-7553
David Ricks David Ricks & Associates 8600 Utica Avenue, Suite 200 Rancho Cucamonga, CA 91730	Telephone: (909) 481-0100 Facsimile: (909) 481-5858 E-mail: DavidR@ricksassociates.com

I declare that I am employed in the offices of a member of this Court at whose direction the service was made.

Executed on August 27, 2008, at San Diego, California.

Lesli D. Miller
(Print Name)

(Signature)

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Attorneys for Plaintiff
ATI INDUSTRIES, INC.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ATI INDUSTRIES, INC., Plaintiff, v. ART AND FRAME MART CORPORATION; DOES 1-10; and ROES 1-100, Defendants.	CASE NO. 08-CV-1296 IEG (RBB) **DECLARATION OF THOMAS W. FERRELL**

I, Thomas W. Ferrell, am above the age of 18 years and have personal knowledge of the facts stated in this document. I could and would testify competently to them.

1. I am the attorney of record for plaintiff, ATI INDUSTRIES, INC. ("ATI"), in this lawsuit.

2. I prepared the Complaint against defendant ART AND FRAME MART CORPORATION ("FRAME MART") (attached here as Exhibit "1" – Court Docket Document No. 1). The Summons and Complaint were personally served on FRAME MART, by delivery to its President at its headquarters in Upland, San Bernardino County, California, on July 21, 2008. (The Summons returned executed is attached under Exhibit "2." It is the Court Docket Document No. 4.)

///

3. To date, the defendant has not responded to the Complaint and no extension of time has been granted to the Defendant.

4. I prepared and caused to be filed the First Amended Complaint against FRAME MART which was filed on July 30, 2008 (First Amended Complaint attached under Exhibit "3." Court Docket Document No. 3.) The First Amended Complaint has an attached proof of service by mail indicating that the First Amended Complaint was addressed to Joseph Nazar (President), Art and Frame Mart Corporation at its corporate headquarters in Upland, California and was deposited with the U.S. Postal Service with the postage fully pre-paid at San Diego, California on July 30, 2008.

5. On Monday, August 4, 2008, I discussed ATI's Complaint against FRAME MART with Attorney Jeff LeBlanc who advised me that he and his colleagues were outside general counsel to FRAME MART. He assured me that all infringing activities by FRAME MART had ceased and he asked if the case could be settled. The next day on August 5, 2008, I wrote Mr. LeBlanc the facsimile that is attached under Exhibit "4" stating that Plaintiff, ATI:

> would like to resolve its injunctive and damages claims without unnecessary litigation expense. . . . Before we can begin to discuss damages for simple infringement, much less wilful infringement, we must have . . . (basic sales and revenue data to calculate infringing profits). . . . This is the fundamental damages discovery that can be provided immediately and very easily from your client's customer sales records. If your client will stipulate to a discovery order setting forth a time table for making these disclosures promptly, ATI would consider entering into a stipulated order temporarily relieving your client from responding to the Complaint. It would allow us to complete this basic discovery so that we can try to settle this lawsuit without expanding the pleadings or suing additional parties.

(August 5, 2008 facsimile to Jeff Blanc, attached as Exhibit "4.")

6. I wrote Mr. LeBlanc again on August 6, 2008 sending him a proposed Stipulation. The facsimile is attached under Exhibit "5" and states:

///

> ATI is willing to enter into the attached Stipulation that gives Art and Frame Mart an extension of time to respond to the Complaint to allow us to focus on the sales and damages information that we need to discuss settlement. Let me know if your client agrees to this extension of time and the informal discovery.

7. The Stipulation I proposed is attached as Exhibit "6."

8. The next day on August 7, 2008 I received another telephone call from Attorney LeBlanc. He told me that his office was not qualified to represent FRAME MART in this lawsuit. He said he and his colleagues were referring the matter to other counsel. I wrote Mr. LeBlanc the facsimile dated August 7, 2008 which is attached under Exhibit "7." In it I reminded Mr. LeBlanc, outside general counsel for FRAME MART:

> ATI is willing to move forward quickly toward settlement discussions with informal damages discovery under the Court's supervision. It is always my practice to be accommodating to attorneys when doing so does not disadvantage my clients. But we will not voluntarily delay moving this case along promptly without this type of stipulation, in light of Mr. Nazar's pattern of dismissing the seriousness of ATI's claims out of hand.

9. After August 7, 2008, I received no further communication from anyone representing FRAME MART until Tuesday, August 19, 2008. On that date, I spoke with Attorney David H. Ricks from Rancho Cucamonga, California who stated that he was being retained to represent FRAME MART in this lawsuit. He was under the impression that FRAME MART's response to the Complaint was due the next day, on August 20, 2008. I informed him that the date for responding to the First Amended Complaint was August 22, 2008. I urged him to read my correspondence with FRAME MART's outside general counsel and to read the Stipulation I proposed that would extend the defendant's answer date in exchange for court-supervised damages discovery. Mr. Rick told me that he would.

10. I have received no further contact from anyone acting on behalf of FRAME MART after August 19, 2008. FRAME MART has not responded to the

original Complaint or the First Amended Complaint. FRAME MART's deadline to answer or otherwise respond to the Complaint or First Amended Complaint was, at its latest – Friday, August 22, 2008.

11. The original Complaint and First Amended Complaint reveal that FRAME MART ignored ATI's verbal request in January 2008 that it cease its infringing conduct. FRAME MART also ignored the cease and desist letter delivered to its President on February 12, 2008 (The cease and desist letter with proof of delivery is Exhibit "C" to ATI's Complaint, which is Exhibit 1 to this Declaration). FRAME MART also ignored the original Complaint that was served personally on FRAME MART's President on July 21, 2008. During the week following personal service of the Complaint, FRAME MART continued to widely display and distribute the Infringing Certificate (that is the subject of this lawsuit) at a major home furnishings exhibition in Las Vegas, Nevada (See ATI's First Amended Complaint at ¶¶ 29-31, which is Exhibit "3" to this Declaration). Defendant has also ignored this Court's Summons.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on August 27, 2008, at San Diego, California.

Thomas W Ferrell

THOMAS W. FERRELL

TABLE OF CONTENTS

Exhibits to Declaration of Thomas W. Ferrell

Exhibit	Pages	Description
1	1-20	Original Complaint, filed July 18, 2008
2	21-22	Proof of Service, dated July 21, 2008
3	23-46	First Amended Complaint, filed July 30, 2008
4	47-61	Facsimile to Jeff LeBlanc, dated August 5, 2008
5	62-66	Facsimile to Jeff LeBlanc, dated August 6, 2008
6	67-69	Stipulation and Order
7	70-71	Facsimile to Jeff LeBlanc, dated August 7, 2008

ORIGINAL

FILED

2008 JUL 18 PM 4: 11

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY CMT DEPUTY

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Attorneys for Plaintiff
ATI INDUSTRIES, INC.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ATI INDUSTRIES, INC., Plaintiff, v. ART AND FRAME MART CORPORATION; DOES 1-10; and ROES 1-100, Defendants.	CASE NO. '08 CV 1296 IEG RBB **COMPLAINT**

Plaintiff, ATI INDUSTRIES, INC. ("ATI"), by its attorneys, Higgs, Fletcher & Mack, LLP, complains against defendants ART AND FRAME MART CORPORATION ("FRAME MART"), DOES 1-10 ("DOES") and ROES 1-100 ("ROES") as follows:

This is an action for copyright infringement.

THE PARTIES

1. Plaintiff ATI resides in the State of California and is an old and established seller of original oil paintings on canvas in the home décor market. ATI affixes to each painting a Certificate of Authenticity (the "Original Certificate"), which is a unique and original certificate created by ATI's president who designed it to distinguish ATI's name, reputation and its paintings in the marketplace. The Original Certificate enhances the value of the paintings sold by

ATI and a portion of the revenue generated by the sales of paintings is attributable to the Original Certificate's promise of authenticity. ATI obtained a federal copyright registration for its Original Certificate.

2. Defendant FRAME MART is a corporation organized under the laws of California with its principal place of business in Upland, California. FRAME MART is a seller of wall décor and ATI's direct competitor in the sale of original oil on canvas paintings. FRAME MART infringed ATI's copyrights in the Original Certificate by photocopying, reproducing and distributing inferior knock-offs (the "Infringing Certificate") of the Original Certificate. The Infringing Certificate is an exact photocopy of the Original Certificate printed on the same colored, but inferior, paper stock and mimics exactly the Original Certificate. The Original Certificate and the Infringing Certificate pictured together speak for themselves (Exhibit "A"). Defendant FRAME MART has distributed the Infringing Certificate to numerous wholesale, retail and consumer purchasers of paintings throughout the United States, including in this judicial district. FRAME MART also distributes oil paintings with the Infringing Certificate on the worldwide web. On information and belief, defendant's personnel and agents have traveled to and conducted business in this judicial district.

3. Upon information and belief, the DOES are residents of and/or doing business in California and have been copying, reproducing and distributing the Infringing Certificate in this judicial district and in interstate commerce. ATI does not yet know the identities of the various DOES. ATI will amend the Complaint to include the names of these persons or entities and to allege their infringing acts when that information is discovered.

4. Upon information and belief, the ROES are residents of and/or doing business in California and elsewhere and are customers of FRAME MART. The ROE defendants are wholesale and resale distributors and sellers of paintings that they acquired from FRAME MART to which the Infringing Certificates have been

attached. The ROE defendants are infringing ATI's copyrights in the Original Certificate as a result of offering for sale paintings with Infringing Certificates that the ROE defendants obtained from FRAME MART. ATI does not yet know the identities of the ROE defendants, but will identify them in discovery.

JURISDICTION AND VENUE

5. This action for copyright infringement arises under the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.* (the "Copyright Act").

6. This Court has subject matter jurisdiction over ATI's copyright claim pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has personal jurisdiction over FRAME MART because it operates its headquarters in the State of California from which it has distributed the Infringing Certificate and because it delivers goods to customers within this judicial district from its facilities and website.

8. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c) and 1400(a).

FACTS

A. The Original Certificate

9. ATI's president, Richard Guy, created and composed the Original Certificate in 1995. He composed the text, designed the layout of the text, selected the variety of typeface, arranged the text on the page, created the text and appearance of the stamp in the lower right-hand corner, and selected the formal border in order to create a striking and memorable promise of authenticity to affix to the original oil paintings that ATI sells nationwide and worldwide.

10. The Original Certificate employs the repetition of certain words and by its text promises to retailers, consumers and all purchasers of ATI's original oil paintings that "this painting is an original oil painting," "this painting was painted by one artist," "entirely by hand," and verifies "this painting as an Original Hand Painted Oil Painting." In reverse color font, the seal in the lower right-hand corner

bears the inscription "CERTIFICATE AUTHENTICITY" which repeats the title of the certificate contained in the largest and most distinctive wording "Certificate Authenticity." The seal also repeats the key text "Original Hand Painted Oil Painting." The text has cadence and alliteration that is striking and memorable. ATI renders the Original Certificate on heavy, buff-colored card stock paper and affixes it to original hand painted oil canvases that ATI sells in this district and in interstate commerce. ATI's Original Certificate bears the legend - © 2004 in the lower right-hand corner.

11. For more than two decades, ATI has been widely recognized as one of the country's premier sellers of original oil paintings on canvas, each hand painted by a single artist. ATI has built a valuable reputation as a source of original oil paintings that have been executed by one artist entirely by hand. ATI has affixed its distinctive Original Certificate to paintings which have been distributed widely throughout the United States. Retailers, consumers and other purchasers associate the Original Certificate with ATI and it is a valuable statement and assurance of authenticity.

12. Modern methods of mass production and "assembly line" methods of creating wall décor are well known to retailers, consumers and other purchasers of canvas paintings in the wall décor market. Over the years ATI's Original Certificate has helped distinguish ATI's paintings as original and has enhanced the value of ATI's hand painted oil paintings. The Original Certificate has contributed to ATI's sales and profitability.

B. FRAME MART's Access

13. ATI is the exclusive owner of the copyright in the Original Certificate for which the Registrar of Copyrights issued a Registration Certificate No. VA1-626-458 (Exhibit "B").

14. Defendants' access to the Original Certificate cannot be denied. The Court may take notice of the exact replication of the Original Certificate to create

the Infringing Certificate. Defendants had access to the Original Certificate due to its use in the marketplace where ATI and FRAME MART are direct competitors.

15. Agents of FRAME MART have seen the Original Certificate at trade shows attended by both FRAME MART and ATI. FRAME MART owners and managers obtained an Original Certificate, placed it in a photocopy machine, and made numerous Infringing Certificates.

C. FRAME MART's Infringing Conduct

16. FRAME MART has distributed the Infringing Certificate in connection with the sale of oil paintings from its headquarters' location in Upland, California, and has distributed the Infringing Certificate to retailers, purchasers and other consumers in this judicial district and across the United States.

17. FRAME MART has distributed the Infringing Certificate to retailers or resellers in this judicial district and the Infringing Certificate is being used in the sale of FRAME MART's oil paintings in San Diego County.

18. The Infringing Certificate has also been distributed via the sales of oil paintings through FRAME MART's website, located at this uniform resource locator ("URL"): http://artframemart.com/catalogel.htm.

19. The Infringing Certificate is a photocopy reproduction of the Original Certificate.

20. Customers and consumers have been misled by the defendants' Infringing Certificate to believe that oil paintings offered for sale by defendants were offered by ATI.

21. In January 2008 ATI's president, Richard Guy, witnessed FRAME MART distributing the Infringing Certificate in connection with the sale of oil paintings at an exposition in Atlanta, Georgia. Mr. Guy told FRAME MART's agents that they were infringing ATI's copyrights in the Original Certificate and requested that FRAME MART stop distributing the Infringing Certificate. FRAME MART's agents laughed and refused to stop distributing the Infringing Certificates.

22. The undersigned counsel for ATI wrote a letter on February 8, 2008 to Joseph Nazar, President of Art and Frame Mart Corporation, at its address at 521 North Mountain Avenue, Suite E, Upland, California, 91786, demanding that FRAME MART cease and desist from using the Infringing Certificates (Exhibit "C"). The letter sent Mr. Nazar the image of the Original Certificate and the Infringing Certificate in the same form as Exhibit A to this complaint so that the President of Art and Frame Mart would have actual, personal knowledge of the infringing conduct and so that he would have an opportunity to stop it. The United States Postal Service confirmed delivery of the letter to FRAME MART on February 12, 2008. Mr. Nazar and the other Defendants ignored the February 8, 2008 letter and did not respond to it.

23. In February 2008 ATI personnel witnessed FRAME MART prominently displaying the Infringing Certificate in connection with the sale of oil paintings at one of the country's major home furnishing expositions in Las Vegas, Nevada.

24. In May 2008 ATI's personnel witnessed FRAME MART prominently displaying the Infringing Certificate in connection with the sale of oil paintings at one of the country's premier home furnishing expositions in High Point, North Carolina. This is a photograph showing one example of FRAME MART's use of the Infringing Certificate inside its showroom at the High Point home furnishing exposition last May. In this example, FRAME MART prominently displayed the Infringing Certificate on the front, top, left corner of a framed painting of a woman.

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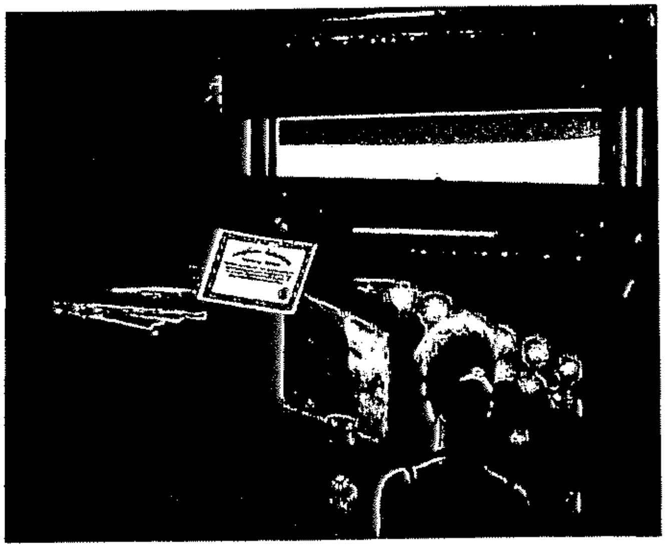

25. FRAME MART is continuing to distribute the infringing certificate after receiving the cease and desist letter on February 12, 2008.

D. Defendants' Willfulness

26. Defendants' photocopying the Original Certificate on the same color paper is the product of conscious, deliberate, and willful infringement for profit by defendants.

27. Defendants' conscious business decision to photocopy the Original Certificate to create numerous Infringing Certificates to use in FRAME MART's sales of oil paintings proves FRAME MART's purposeful use of the Original Certificate to increase the value and enhance the marketplace appeal of FRAME MART's oil paintings. Frame Mart's deliberate copying of the Original Certificate and use of Infringing Certificates proves the value of the Original Certificate in the marketplace.

28. Defendants' continuing willful infringement of ATI's intellectual property rights is proved by its agents' refusal to cease and desist when requested by Richard Guy, and its refusal to respond to the February 8, 2008 cease and desist letter. Defendants have continued their infringing conduct after receiving visual proof and being notified in writing that the Infringing Certificate is a copy of the

Original Certificate.

COUNT AGAINST ALL DEFENDANTS

(Copyright Infringement; 17 U.S.C. §§ 101 *et seq.*)

29. Plaintiff repeats and realleges the allegations set forth above in paragraphs 1 through 34.

30. ATI is the exclusive copyright holder of the Original Certificate.

31. Each of the defendants had access to the Original Certificate, as proved by the act of photocopying an Original Certificate to create the Infringing Certificates.

32. ATI did not grant defendants authority to use the Original Certificate. Defendants' infringement of ATI's Original Certificate violates ATI's exclusive rights in the Original Certificate.

33. Each of the defendants knowingly caused, participated in, materially contributed to and derived economic benefit from the infringement of ATI's Original Certificate.

34. Each of the defendants specifically including but not limited to FRAME MART's wholesale and retail customers, has wrongfully profited and continues to profit from its infringement of ATI's Original Certificate. Each of the defendant's infringing conduct has caused and continues to cause actual damages to ATI as well as irreparable injury to ATI in an amount that is not yet known. Unless enjoined and restrained, defendants' infringing conduct will cause further irreparable injury, leaving ATI with no adequate remedy at law.

35. Defendants' continuation of its unlawful conduct after being warned by ATI in person and after receiving the February 8, 2008 cease and desist letter warrants punishment to deter such willful violations of other people's rights.

36. ATI is therefore entitled to injunctive, monetary and other relief, including punitive damages.

WHEREFORE, plaintiff demands a trial by jury pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and seeks judgment:

(a) declaring that each of the defendants has infringed ATI's copyrights in the Original Certificate;

(b) declaring that the defendants have willfully infringed ATI's copyrights in and to the Original Certificate in violation of the Copyright Act;

(c) enjoining each of the defendants, and their respective officers, directors, agents, servants, employees, representatives, attorneys, related companies, successors, assigns, and all others in concert or participation with them, from infringing plaintiff's copyrights in the Original Certificate, or any prior and subsequent versions of it;

(d) ordering the recall and destruction of all copies of the Infringing Certificate in the possession, custody and/or control of defendants;

(e) awarding ATI the actual damages it has sustained as a result of defendants' copyright infringement and awarding ATI all profits derived by defendants including but not limited to FRAME MART's wholesale and retail customers, as a result of their infringing activities pursuant to 17 U.S.C. § 504(b), plus interest on those amounts;

(f) ordering defendants including but not limited to FRAME MART's wholesale and retail customers, to account for and disgorge to ATI all gains, profits, and advantages derived by their copyright infringement pursuant to 17 U.S.C. § 504(b), plus interest on those amounts;

(g) awarding ATI punitive damages based on the defendants' willful infringement; and

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(h) awarding ATI its costs, attorney's fees, and all other and further relief that the Court deems just and proper.

DATED: July 18, 2008

HIGGS, FLETCHER & MACK LLP

By: [signature]
THOMAS W. FERRELL, ESQ.
Attorneys for Plaintiff
ATI INDUSTRIES, INC.

Certificate Authenticity

Certificate of Authenticity

This Certificate of Authenticity, confirms that this painting is an original oil painting. This painting was painted by one artist entirely by hand. This certificate officially establishes this painting as an Original Hand Painted Oil Painting

CERTIFICATE
Original
Hand Painted
Oil Painting
AUTHENTICITY

© 2004

Certificate Authenticity

Certificate of Authenticity

This Certificate of Authenticity, confirms that this painting is an original oil painting. This painting was painted by one artist entirely by hand. This certificate officially establishes this painting as an Original Hand Painted Oil Painting

CERTIFICATE
Original
Hand Painted
Oil Painting
AUTHENTICITY

© 2004

Exhibit B

Certificate of Registration

This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Registration Number:

VA 1-626-458

Effective date of registration:

February 1, 2008

Title

Title of Work: Small Certificate of Authenticity

Nature of Work: Text

Completion/ Publication

Year of Completion: 2001

Date of 1st Publication: June 1, 2001 **Nation of 1st Publication:** United States

Author

- **Author:** ATI Industries, Inc.

Author Created: Text

Work made for hire: Yes

Citizen of: United States

Anonymous: No **Pseudonymous:** No

Copyright claimant

Copyright Claimant: ATI Industries, Inc.

PO Box 2222, Mission Viejo, CA 92690

Limitation of copyright claim

Previously registered: No

Certification

Name: Michael J. Hoisington, Esq., authorized agent of ATI Industries, Inc.

Date: January 30, 2008

Correspondence: Yes

Copyright Office notes: Regarding deposit: year date in copright notice is 2004.

HIGGS FLETCHER & MACK

San Diego's Law Firm Since 1939

Thomas W. Ferrell
Partner

tferrell@higgslaw.com
D 619.595.4235

February 8, 2008

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Joseph Nazar
President
Art and Frame Mart Corporation
521 North Mountain Avenue, Suite E
Upland, CA 91786

Re: CEASE AND DESIST
File No. 105314-00002

Dear Mr. Nazar:

I represent ATI Industries, the owner of all rights to the copyrighted Certificate of Authenticity, a copy of which is attached to this letter (the "Original Certificate"). We have learned that Art and Frame Mart Corporation is reproducing, selling and distributing an identical copy of ATI's Original Certificate (the "Infringing Certificate"). The Infringing Certificate is a poor quality but exact photocopy of ATI Industries' Original Certificate. I have attached images of the Original Certificate and the Infringing Certificate. They speak for themselves.

Your use and distribution of the Infringing Certificate infringes our client's copyright rights under federal and common law. ATI demands that Art and Frame Mart Corporation immediately:

(1) Cease and desist all sales, distribution, copying or other uses of the Infringing Certificate and that you deliver all unused, undistributed copies of the Infringing Certificate to us for destruction;

(2) Identify all customers, purchasers, distributors, retailers and anyone else to whom you have delivered the Infringing Certificate;

(3) Contact all wholesalers, retailers and distributors who have in their inventory or possession any products that display or contain the Infringing Certificate and instruct them

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San Diego's Law Firm Since 1939

immediately to remove all of the Infringing Certificates from commerce and to save them for an accounting;

(4) Provide a detailed accounting of all sales of any description in which the Infringing Certificate was affixed to any item or was a part of the sale, with a breakdown of the volume and value of sales to each retailer, wholesaler, customer distributor and purchaser; and

(5) Respond to the undersigned in writing by no later than Wednesday, February 20, 2008 to assure us of your compliance with these demands and to discuss the possible informal resolution of ATI Industries' potential legal claims.

Art and Frame Mart Corporation's continued unlawful use of the Infringing Certificate is damaging our client and must immediately cease. Accordingly, if we do not hear from you by February 20 at 5:00 p.m., we intend to take all steps necessary to protect ATI Industries' rights and interests by initiating a lawsuit against Art and Frame Mart Corporation seeking, among other things, an injunction, an accounting of all sales, compensatory damages, disgorgement of profits, and punitive damages. This demand does not waive any other rights, claims or remedies that ATI Industries may have against Art and Frame Mart Corporation.

Very truly yours,

Tom Ferrell

THOMAS W. FERRELL
of
HIGGS, FLETCHER & MACK LLP

TWF/ldm

cc: ATI Industries
Mitchell B. Dubick, Esq.
Charles F. Reidelbach, Jr., Esq.
Michael J. Hoisington, Esq.

843235.1

Certificate Authenticity

Certificate of Authenticity

This Certificate of Authenticity, confirms that this painting is an original oil painting. This painting was painted by one artist entirely by hand. This certificate officially establishes this painting as an Original Hand Painted Oil Painting

CERTIFICATE
Original Hand Painted Oil Painting
AUTHENTICITY

© 2004

Certificate Authenticity

Certificate of Authenticity

This Certificate of Authenticity, confirms that this painting is an original oil painting. This painting was painted by one artist entirely by hand. This certificate officially establishes this painting as an Original Hand Painted Oil Painting

CERTIFICATE
Original Hand Painted Oil Painting
AUTHENTICITY

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OFFICIAL USE

7004 0750 0001 2926 1118

Postage	$
Certified Fee	
Return Reciept Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 5.38

Postmark Here

Sent To: Joseph Nazar – Art + Frame Mart Corp.
Street, Apt. No.; or PO Box No.: 521 N. Mtn Ave, #E
City, State, ZIP+4: Upland, CA 91786

PS Form 3800, June 2002 — See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Joseph Nazar
Art + Frame Mart Corp.
521 N. Mountain Ave. #E
Upland, CA 91786

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery 2/12/08

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7004 0750 0001 2926 1118

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

153162 - MB
* * C O P Y * *
July 18, 2008
16:21:26

Civ Fil Non-Pris
USAO #.: 08CV1296 CIVIL FILING
Judge..: IRMA E GONZALEZ
Amount.: $350.00 CK
Check#.: BC22939

Total-> $350.00

FROM: ATI INDUSTRIES INC VS
ART & FRAME MART COPR

Summons in a Civil Action (Rev 11/97)

United States District Court
SOUTHERN DISTRICT OF CALIFORNIA

FILED
2008 AUG -5 AM 9:55
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

ATI INDUSTRIES, INC.

Plaintiff

vs

ART AND FRAME MART CORPORATION; DOES 1-10; and ROES 1-100

Defendants

SUMMONS IN A ~~CIVIL ACTION~~
Case No. '08 CV 1296 IEG RBB

TO: (Name and Address of Defendant)

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon PLAINTIFF'S ATTORNEY

Thomas W. Ferrell
Higgs, Fletcher & Mack LLP
401 West A Street, Suite 2600
San Diego, CA 92101
(619) 236-1551

An answer to the complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

W. Samuel Hamrick, Jr.
CLERK

JUL 18 2008
DATE

By K. HAMMERLY, Deputy Clerk

Summons in a Civil Action

::ODMA\PCDOCS\WORDPERFECT\14443\1 May 5, 1999 (11:34am)

EXHIBIT 2
PAGE 21

AO-440S

HIGGS, FLETCHER & MACK
401 WEST A STREET, SUITE 2600
SAN DIEGO CA 92101
619-236-1551

Ref. No. : 0446320-01
Atty. File No.: 08CV12961EGRBB

SUPERIOR COURT OF CA., COUNTY OF SAN DIEGO
SAN DIEGO JUDICIAL DISTRICT

PLAINTIFF : ATI INDUSTRIES
DEFENDANT : ART & FRAME MART CORP.

Case No.: 08CV12691EGRBB
PROOF OF SERVICE

1. At the time of service I was at least 18 years of age and not a party to this action.

2. I served copies of the SUMMONS & COMPLAINT,

3. a. Party served : ART & FRAME MART CORP. C/O MR. NASER
   b. Person served : JOSEF NASER, (AUTHORIZED TO ACCEPT)

4. Address where the party was served 521 MOUNTAIN AVE UNIT E UPLAND, CA 91786

5. I served the party
   a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on July 21, 2008 (2) at: 04:50 PM

6. The "Notice to the person served" (on the summons) was completed as follows:
   c. on behalf of: ART & FRAME MART CORP. C/O MR. NASER
   under [xx] CCP 416.10 (corporation)

7. **Person who served papers**
   a. JOE CASILLAS
   b. KNOX SERVICES
   2201 E. 4th Street, P.O. Box 11960
   Santa Ana, California 92705
   c. 714-479-1650
   d. Fee for service: $90.50
   e. I am:
   (3) a registered California process server
   (i) an employee
   (ii) Registration No. 5393
   (iii) County: Orange

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: July 22, 2008

Signature: JOE CASILLAS

PROOF OF SERVICE

Jud. Coun. form, rule 2.150 CRC
JC Form POS 010 (Rev. January 1, 2007)

MITCHELL B. DUBICK, ESQ. (Bar No. 101658)
dubick@higgslaw.com
THOMAS W. FERRELL, ESQ. (Bar No. 115605)
tferrell@higgslaw.com
HIGGS, FLETCHER & MACK LLP
401 West "A" Street, Suite 2600
San Diego, CA 92101-7913
TEL: 619.236.1551
FAX: 619.696.1410

Attorneys for Plaintiff
ATI INDUSTRIES, INC.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ATI INDUSTRIES, INC.,

Plaintiff,

v.

ART AND FRAME MART CORPORATION; DOES 1-10; and ROES 1-100,

Defendants.

CASE NO. 08-CV-1296 IEG (RBB)

FIRST AMENDED COMPLAINT

Plaintiff, ATI INDUSTRIES, INC. ("ATI"), by its attorneys, Higgs, Fletcher & Mack, LLP, complains against defendants ART AND FRAME MART CORPORATION ("FRAME MART"), DOES 1-10 ("DOES") and ROES 1-100 ("ROES") as follows:

This is an action for copyright infringement.

THE PARTIES

1. Plaintiff ATI resides in the State of California and is an old and established seller of original oil paintings on canvas in the home décor market. ATI affixes to each painting a Certificate of Authenticity (the "Original Certificate"), which is a unique and original certificate created by ATI's president who designed it to distinguish ATI's name, reputation and its paintings in the marketplace. The Original Certificate enhances the value of the paintings sold by ATI and a portion of

the revenue generated by the sales of paintings is attributable to the Original Certificate's promise of authenticity. ATI obtained a federal copyright registration for its Original Certificate.

2. Defendant FRAME MART is a corporation organized under the laws of California with its principal place of business in Upland, California. FRAME MART is a seller of wall décor and ATI's direct competitor in the sale of original oil on canvas paintings. FRAME MART infringed ATI's copyrights in the Original Certificate by photocopying, reproducing and distributing inferior knock-offs (the "Infringing Certificate") of the Original Certificate. The Infringing Certificate is an exact photocopy of the Original Certificate printed on the same colored, but inferior, paper stock and mimics exactly the Original Certificate. The Original Certificate and the Infringing Certificate pictured together speak for themselves (Exhibit "A"). Defendant FRAME MART has distributed the Infringing Certificate to numerous wholesale, retail and consumer purchasers of paintings throughout the United States, including in this judicial district. FRAME MART also distributes oil paintings with the Infringing Certificate on the worldwide web. On information and belief, defendant's personnel and agents have traveled to and conducted business in this judicial district.

3. Upon information and belief, the DOES are residents of and/or doing business in California and have been copying, reproducing and distributing the Infringing Certificate in this judicial district and in interstate commerce. ATI does not yet know the identities of the various DOES. ATI will amend the Complaint to include the names of these persons or entities and to allege their infringing acts when that information is discovered.

4. Upon information and belief, the ROES are residents of and/or doing business in California and elsewhere and are customers of FRAME MART. The ROE defendants are wholesale and resale distributors and sellers of paintings that they acquired from FRAME MART to which the Infringing Certificates have been

attached. The ROE defendants are infringing ATI's copyrights in the Original Certificate as a result of offering for sale paintings with Infringing Certificates that the ROE defendants obtained from FRAME MART. ATI does not yet know the identities of the ROE defendants, but will identify them in discovery.

JURISDICTION AND VENUE

5. This action for copyright infringement arises under the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.* (the "Copyright Act").

6. This Court has subject matter jurisdiction over ATI's copyright claim pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has personal jurisdiction over FRAME MART because it operates its headquarters in the State of California from which it has distributed the Infringing Certificate and because it delivers goods to customers within this judicial district from its facilities and website.

8. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c) and 1400(a).

FACTS

A. The Original Certificate

9. ATI's president, Richard Guy, created and composed the Original Certificate in 1995. He composed the text, designed the layout of the text, selected the variety of typeface, arranged the text on the page, created the text and appearance of the stamp in the lower right-hand corner, and selected the formal border in order to create a striking and memorable promise of authenticity to affix to the original oil paintings that ATI sells nationwide and worldwide.

10. The Original Certificate employs the repetition of certain words and by its text promises to retailers, consumers and all purchasers of ATI's original oil paintings that "this painting is an original oil painting," "this painting was painted by one artist," "entirely by hand," and verifies "this painting as an Original Hand Painted Oil Painting." In reverse color font, the seal in the lower right-hand corner

bears the inscription "CERTIFICATE AUTHENTICITY" which repeats the title of the certificate contained in the largest and most distinctive wording "Certificate Authenticity." The seal also repeats the key text "Original Hand Painted Oil Painting." The text has cadence and alliteration that is striking and memorable. ATI renders the Original Certificate on heavy, buff-colored card stock paper and affixes it to original hand painted oil canvases that ATI sells in this district and in interstate commerce. ATI's Original Certificate bears the legend - © 2004 in the lower right-hand corner.

11. For more than two decades, ATI has been widely recognized as one of the country's premier sellers of original oil paintings on canvas, each hand painted by a single artist. ATI has built a valuable reputation as a source of original oil paintings that have been executed by one artist entirely by hand. ATI has affixed its distinctive Original Certificate to paintings which have been distributed widely throughout the United States. Retailers, consumers and other purchasers associate the Original Certificate with ATI and it is a valuable statement and assurance of authenticity.

12. Modern methods of mass production and "assembly line" methods of creating wall décor are well known to retailers, consumers and other purchasers of canvas paintings in the wall décor market. Over the years ATI's Original Certificate has helped distinguish ATI's paintings as original and has enhanced the value of ATI's hand painted oil paintings. The Original Certificate has contributed to ATI's sales and profitability.

B. FRAME MART's Access

13. ATI is the exclusive owner of the copyright in the Original Certificate for which the Registrar of Copyrights issued a Registration Certificate No. VA1-626-458 (Exhibit "B").

14. Defendants' access to the Original Certificate cannot be denied. The Court may take notice of the exact replication of the Original Certificate to create

the Infringing Certificate. Defendants had access to the Original Certificate due to its use in the marketplace where ATI and FRAME MART are direct competitors.

15. Agents of FRAME MART have seen the Original Certificate at trade shows attended by both FRAME MART and ATI. FRAME MART owners and managers obtained an Original Certificate, placed it in a photocopy machine, and made numerous Infringing Certificates.

C. FRAME MART's Infringing Conduct

16. FRAME MART has distributed the Infringing Certificate in connection with the sale of oil paintings from its headquarters' location in Upland, California, and has distributed the Infringing Certificate to retailers, purchasers and other consumers in this judicial district and across the United States.

17. FRAME MART has distributed the Infringing Certificate to retailers or resellers in this judicial district and the Infringing Certificate is being used in the sale of FRAME MART's oil paintings in San Diego County.

18. The Infringing Certificate has also been distributed via the sales of oil paintings through FRAME MART's website, located at this uniform resource locator ("URL"): http://artframemart.com/cataloge1.htm.

19. The Infringing Certificate is a photocopy reproduction of the Original Certificate.

20. Customers and consumers have been misled by the defendants' Infringing Certificate to believe that oil paintings offered for sale by defendants were offered by ATI.

21. In January 2008 ATI's president, Richard Guy, witnessed FRAME MART distributing the Infringing Certificate in connection with the sale of oil paintings at an exposition in Atlanta, Georgia. Mr. Guy told FRAME MART's agents that they were infringing ATI's copyrights in the Original Certificate and requested that FRAME MART stop distributing the Infringing Certificate. FRAME MART's agents laughed and refused to stop distributing the Infringing Certificates.

22. The undersigned counsel for ATI wrote a letter on February 8, 2008 to Josef Nazar, President of Art and Frame Mart Corporation, at its address at 521 North Mountain Avenue, Suite E, Upland, California, 91786, demanding that FRAME MART cease and desist from using the Infringing Certificates (Exhibit "C"). The letter sent Mr. Nazar the image of the Original Certificate and the Infringing Certificate in the same form as Exhibit A to this complaint so that the President of Art and Frame Mart would have actual, personal knowledge of the infringing conduct and so that he would have an opportunity to stop it. The United States Postal Service confirmed delivery of the letter to FRAME MART on February 12, 2008. Mr. Nazar and the other Defendants ignored the February 8, 2008 letter and did not respond to it.

23. In February 2008 ATI personnel witnessed FRAME MART prominently displaying the Infringing Certificate in connection with the sale of oil paintings at one of the country's major home furnishing expositions in Las Vegas, Nevada.

24. In May 2008 ATI's personnel witnessed FRAME MART prominently displaying the Infringing Certificate in connection with the sale of oil paintings at one of the country's premier home furnishing expositions in High Point, North Carolina. This is a photograph showing one example of FRAME MART's use of the Infringing Certificate inside its showroom at the High Point home furnishing exposition last May. In this example, FRAME MART prominently displayed the Infringing Certificate on the front, top, left corner of a framed painting of a woman. On information and belief, FRAME MART distributed the infringing certificates to its wholesale and retail customers at the High Point exposition without revealing ATI's copyright claims to its customers, thereby knowingly exposing those customers to liability for copyright infringement.

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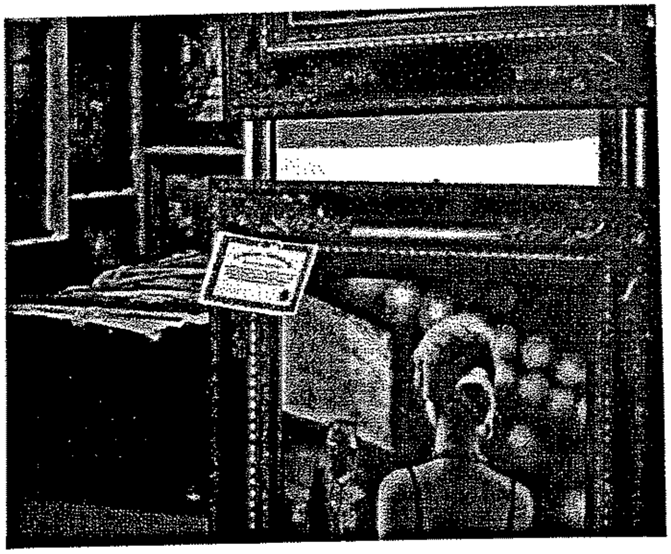

25. FRAME MART is continuing to distribute the infringing certificate via salespersons, internet and other means after receiving the cease and desist letter on February 12, 2008. On information and belief, FRAME MART continues to distribute the infringing certificates to its wholesale and retail customers without revealing ATI's copyright claims to its customers, thereby knowingly exposing those customers to liability for copyright infringement.

D. Defendants' Willfulness

26. Defendants' photocopying the Original Certificate on the same color paper is the product of conscious, deliberate, and willful infringement for profit by defendants.

27. Defendants' conscious business decision to photocopy the Original Certificate to create numerous Infringing Certificates to use in FRAME MART's sales of oil paintings proves FRAME MART's purposeful use of the Original Certificate to increase the value and enhance the marketplace appeal of FRAME MART's oil paintings. Frame Mart's deliberate copying of the Original Certificate and use of Infringing Certificates proves the value of the Original Certificate in the marketplace.

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28. Defendants' continuing willful infringement of ATI's intellectual property rights is proved by its agents' refusal to cease and desist when requested by Richard Guy, and its refusal to respond to the February 8, 2008 cease and desist letter. Defendants have continued their infringing conduct after receiving visual proof and being notified in writing that the Infringing Certificate is a copy of the Original Certificate.

29. ATI served the original complaint on defendant FRAME MART by personal delivery at FRAME MART's corporate offices on July 21, 2008 at 4:50 p.m. The process server personally served Josef Nazar, President of FRAME MART. Mr. Nazar is the same individual that received the cease and desist letter in February 2008.

30. Neither ATI nor its undersigned counsel received any contact from FRAME MART or counsel representing FRAME MART concerning service of the complaint after the complaint was served.

31. FRAME MART and Mr. Nazar are at this moment attending a major home furnishings exposition in Las Vegas, Nevada. Continually since Monday, July 28, 2008, FRAME MART and Mr. Nazar have prominently displayed multiple copies of the Infringing Certificate in its Las Vegas showroom attached to paintings FRAME MART is offering for sale. FRAME MART, with the express knowledge and at the direction of Mr. Nazar, is continuing to infringe ATI's Original Certificate even after Mr. Nazar personally received ATI's complaint on July 21 that explained ATI's rights and the harm caused by FRAME MART's ongoing infringement. On information and belief, FRAME MART is distributing the Infringing Certificates to its wholesale and retail customers at the Las Vegas exposition without revealing ATI's copyright claims to its customers, thereby knowingly exposing those customers to liability for copyright infringement.

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COUNT AGAINST ALL DEFENDANTS

(Copyright Infringement; 17 U.S.C. §§ 101 *et seq.*)

32. Plaintiff repeats and realleges the allegations set forth above in paragraphs 1 through 34.

33. ATI is the exclusive copyright holder of the Original Certificate.

34. Each of the defendants had access to the Original Certificate, as proved by the act of photocopying an Original Certificate to create the Infringing Certificates.

35. ATI did not grant defendants authority to use the Original Certificate. Defendants' infringement of ATI's Original Certificate violates ATI's exclusive rights in the Original Certificate.

36. Each of the defendants knowingly caused, participated in, materially contributed to and derived economic benefit from the infringement of ATI's Original Certificate.

37. Each of the defendants specifically including but not limited to FRAME MART's wholesale and retail customers, has wrongfully profited and continues to profit from its infringement of ATI's Original Certificate. Each of the defendant's infringing conduct has caused and continues to cause actual damages to ATI as well as irreparable injury to ATI in an amount that is not yet known. Unless enjoined and restrained, defendants' infringing conduct will cause further irreparable injury, leaving ATI with no adequate remedy at law.

38. Defendants' continuation of its unlawful conduct after being warned by ATI in person and after receiving the February 8, 2008 cease and desist letter warrants punishment to deter such willful violations of other people's rights.

39. ATI is therefore entitled to injunctive, monetary and other relief, including punitive damages.

WHEREFORE, plaintiff demands a trial by jury pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and seeks judgment:

(a) declaring that each of the defendants has infringed ATI's copyrights in the Original Certificate;

(b) declaring that the defendants have willfully infringed ATI's copyrights in and to the Original Certificate in violation of the Copyright Act;

(c) enjoining each of the defendants, and their respective officers, directors, agents, servants, employees, representatives, attorneys, related companies, successors, assigns, and all others in concert or participation with them, from infringing plaintiff's copyrights in the Original Certificate, or any prior and subsequent versions of it;

(d) ordering the recall and destruction of all copies of the Infringing Certificate in the possession, custody and/or control of defendants;

(e) awarding ATI the actual damages it has sustained as a result of defendants' copyright infringement and awarding ATI all profits derived by defendants including but not limited to FRAME MART's wholesale and retail customers, as a result of their infringing activities pursuant to 17 U.S.C. § 504(b), plus interest on those amounts;

(f) ordering DOE and ROE defendants including but not limited to FRAME MART's wholesale and retail customers, to account for and disgorge to ATI all gains, profits, and advantages derived by their copyright infringement pursuant to 17 U.S.C. § 504(b), plus interest on those amounts;

(g) awarding ATI punitive damages based on the defendants' willful infringement; and

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(h) awarding ATI its costs, attorney's fees, and all other and further relief that the Court deems just and proper.

DATED: July 30, 2008

HIGGS, FLETCHER & MACK LLP

By: [signature]
THOMAS W. FERRELL, ESQ.
Attorneys for Plaintiff
ATI INDUSTRIES, INC.

EXHIBIT A

Certificate Authenticity

Certificate of Authenticity

This Certificate of Authenticity, confirms that this painting is an original oil painting. This painting was painted by one artist entirely by hand. This certificate officially establishes this painting as an Original Hand Painted Oil Painting

CERTIFICATE Original Hand Painted Oil Painting AUTHENTICITY

© 2004

Certificate Authenticity

Certificate of Authenticity

This Certificate of Authenticity, confirms that this painting is an original oil painting. This painting was painted by one artist entirely by hand. This certificate officially establishes this painting as an Original Hand Painted Oil Painting

CERTIFICATE Original Hand Painted Oil Painting AUTHENTICITY

© 2004

EXHIBIT B

Certificate of Registration

SEAL OF THE UNITED STATES COPYRIGHT OFFICE 1870

This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Registration Number:

VA 1-626-458

Effective date of registration:

February 1, 2008

Title

Title of Work: Small Certificate of Authenticity

Nature of Work: Text

Completion/ Publication

Year of Completion: 2001

Date of 1st Publication: June 1, 2001

Nation of 1st Publication: United States

Author

- **Author:** ATI Industries, Inc.

Author Created: Text

Work made for hire: Yes

Citizen of: United States

Anonymous: No

Pseudonymous: No

Copyright claimant

Copyright Claimant: ATI Industries, Inc.

PO Box 2222, Mission Viejo, CA 92690

Limitation of copyright claim

Previously registered: No

Certification

Name: Michael J. Hoisington, Esq., authorized agent of ATI Industries, Inc.

Date: January 30, 2008

Correspondence: Yes

Copyright Office notes: Regarding deposit: year date in copright notice is 2004.

EXHIBIT C

HIGGS FLETCHER & MACK

San Diego's Law Firm Since 1939

Thomas W. Ferrell
Partner

tferrell@higgslaw.com
D 619.595.4235

February 8, 2008

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Joseph Nazar
President
Art and Frame Mart Corporation
521 North Mountain Avenue, Suite E
Upland, CA 91786

Re: CEASE AND DESIST
File No. 105314-00002

Dear Mr. Nazar:

I represent ATI Industries, the owner of all rights to the copyrighted Certificate of Authenticity, a copy of which is attached to this letter (the "Original Certificate"). We have learned that Art and Frame Mart Corporation is reproducing, selling and distributing an identical copy of ATI's Original Certificate (the "Infringing Certificate"). The Infringing Certificate is a poor quality but exact photocopy of ATI Industries' Original Certificate. I have attached images of the Original Certificate and the Infringing Certificate. They speak for themselves.

Your use and distribution of the Infringing Certificate infringes our client's copyright rights under federal and common law. ATI demands that Art and Frame Mart Corporation immediately:

(1) Cease and desist all sales, distribution, copying or other uses of the Infringing Certificate and that you deliver all unused, undistributed copies of the Infringing Certificate to us for destruction;

(2) Identify all customers, purchasers, distributors, retailers and anyone else to whom you have delivered the Infringing Certificate;

(3) Contact all wholesalers, retailers and distributors who have in their inventory or possession any products that display or contain the Infringing Certificate and instruct them

HIGGS FLETCHER & MACK

San Diego's Law Firm Since 1939

Joseph Nazar
February 8, 2008
Page 2

immediately to remove all of the Infringing Certificates from commerce and to save them for an accounting;

(4) Provide a detailed accounting of all sales of any description in which the Infringing Certificate was affixed to any item or was a part of the sale, with a breakdown of the volume and value of sales to each retailer, wholesaler, customer distributor and purchaser; and

(5) Respond to the undersigned in writing by no later than Wednesday, February 20, 2008 to assure us of your compliance with these demands and to discuss the possible informal resolution of ATI Industries' potential legal claims.

Art and Frame Mart Corporation's continued unlawful use of the Infringing Certificate is damaging our client and must immediately cease. Accordingly, if we do not hear from you by February 20 at 5:00 p.m., we intend to take all steps necessary to protect ATI Industries' rights and interests by initiating a lawsuit against Art and Frame Mart Corporation seeking, among other things, an injunction, an accounting of all sales, compensatory damages, disgorgement of profits, and punitive damages. This demand does not waive any other rights, claims or remedies that ATI Industries may have against Art and Frame Mart Corporation.

Very truly yours,

THOMAS W. FERRELL
of
HIGGS, FLETCHER & MACK LLP

TWF/ldm

cc: ATI Industries
Mitchell B. Dubick, Esq.
Charles F. Reidelbach, Jr., Esq.
Michael J. Hoisington, Esq.

843235.1

Certificate Authenticity

Certificate of Authenticity

This Certificate of Authenticity, confirms that this painting is an original oil painting. This painting was painted by one artist entirely by hand. This certificate officially establishes this painting as an Original Hand Painted Oil Painting

CERTIFICATE Original Hand Painted Oil Painting AUTHENTICITY

© 2004

Certificate Authenticity

Certificate of Authenticity

This Certificate of Authenticity, confirms that this painting is an original oil painting. This painting was painted by one artist entirely by hand. This certificate officially establishes this painting as an Original Hand Painted Oil Painting

CERTIFICATE Original Hand Painted Oil Painting AUTHENTICITY

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com®

OFFICIAL USE

7004 0750 0001 2926 1118

Postage	$
Certified Fee	
Return Reciept Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 5.38

Postmark Here

Sent To: Joseph Nazar - Art + Frame Mart Corp.
Street, Apt. No.; or PO Box No.: 521 N. Mtn. Ave, #E
City, State, ZIP+4: Upland, CA 91786

PS Form 3800, June 2002 — See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Joseph Nazar
Art + Frame Mart Corp.
521 N. Mountain Ave. #E
Upland, CA 91786

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery 7/21/08

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7004 0750 0001 2926 1118

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

RE: *ATI Industries, Inc. v. Art and Frame Mart Corporation, et al.*

VENUE: United States District Court – Southern District of California

CASE NO.: 08-CV-1296 IEG (RBB)

PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of eighteen (18) years and not a party to the within action; my business address is: 401 West A Street, Suite 2600, San Diego, CA 92101. On July 30, 2008, I served the within documents, with all exhibits (if any):

FIRST AMENDED COMPLAINT

☐ **(BY ELECTRONIC SERVICE)** I am familiar with the United States District Court, Central District of California's practice for collecting and processing electronic filings. Under that practice, documents are electronically filed with the Court. The Court's CM/ECF system will generate a Notice of Electronic Filing (NEF) to the filing party, the assigned judge, and any registered users in the case. The NEF will constitute service of the document. Registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities.

☒ **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at San Diego, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Joseph Nazar Art and Frame Mart Corporation 521 Mountain Avenue, Unit E Upland, CA 91788	Telephone: (877) 322-2100 Facsimile: (909) 373-0383

I declare that I am employed in the offices of a member of this Court at whose direction the service was made.

Executed on July 30, 2008, at San Diego, California.

Lesli D. Miller
(Print Name)

(Signature)

Miller, Lesli D.

From: efile_information@casd.uscourts.gov
Sent: Wednesday, July 30, 2008 2:08 PM
To: casd.uscourts.gov@casd.uscourts.gov
Subject: Activity in Case 3:08-cv-01296-IEG-RBB ATI Industries, Inc v. Art and Frame Mart Corporation et al Amended Complaint

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court

Southern District of California

Notice of Electronic Filing

The following transaction was entered by Ferrell, Thomas on 7/30/2008 at 2:08 PM PDT and filed on 7/30/2008
Case Name: ATI Industries, Inc v. Art and Frame Mart Corporation et al
Case Number: 3:08-cv-1296
Filer: ATI Industries, Inc
Document Number: 3

Docket Text:
AMENDED COMPLAINT *(First)* against Art and Frame Mart Corporation, filed by ATI Industries, Inc.(Ferrell, Thomas)

3:08-cv-1296 Notice has been electronically mailed to:

Thomas W Ferrell tferrell@higgslaw.com, millerl@higgslaw.com

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24d4e8be749a66331ca86e1e72d2cac4611db74ee4b4a12d286c7856d48d9]]

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FACSIMILE TRANSMISSION

Date	August 5, 2008	***File Number***	851-105314-00002
To	Jeff LeBlanc	***Fax***	909.985.7553 ***Tel*** 909.949.2227
From	Thomas W. Ferrell	***Tel***	619.595.4235
Re	*ATI Industries v. Art and Frame Mart Corporation*		

Number of pages with cover page 14

MESSAGE:

Mr. LeBlanc,

Please forgive the spelling if it is incorrect. I could not locate you in Martindale Hubbell. Here is the First Amended Complaint that we filed on July 30th and served on Mr. Nazar. We filed it after receiving proof that Mr. Nazar and his company were continuing highly public use of the Infringing Certificate at the Las Vegas exposition last week even after Mr. Nazar himself received ATI's Complaint by personal service on July 21st. The First Amended Complaint adds those allegations at paragraphs 29, 30 and 31.

We also amended the Complaint to explain to the Court that Mr. Nazer and Art and Frame Mart continued to distribute the Infringing Certificate to their customers without disclosing to those customers that Mr. Nazer had personal knowledge of the infringing conduct but nevertheless refused to cease. Art and Frame Mart has knowingly exposed its commercial customers to damages for infringement as a result of those customers' later sales. Those resellers are ROE defendants and are liable to disgorge their own profits and may be subject to other damages because of their sales. ATI will identify those customers in discovery, determine the profits from their infringing sales and join them in this lawsuit, if necessary, to obtain the damages due to ATI originating from Art and Frame Mart's willful infringement.

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Date August 5, 2008 ***File Number*** 851-105314-00002

To Jeff LeBlanc

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I appreciated your representation that your client has now ceased all infringing activities and your assurance that your client will never again infringe upon ATI's copyrights. Art and Frame Mart could have ceased in January when Mr. Guy asked them to cease at the Atlanta exposition, but they laughed and told him "you can sue." Or your client could have ceased when Mr. Nazar received the cease and desist letter on February 12, 2008, instead of ignoring the letter and continuing to distribute the Infringing Certificate in its showroom and internet sales and prominently at the May exposition in High Point. Or your client could have ceased when Mr. Nazar was personally served with the Complaint on July 21st but instead continued to display and distribute the Infringing Certificate at the Las Vegas exposition last week.

I am sure ATI would like to resolve its injunctive and damages claims without unnecessary litigation expense. But it can recover its fees and costs from a willful infringer. Before we can begin to discuss damages for simple infringement, much less willful infringement, we must have:

1. Your client's records of all sales of paintings with the infringing certificate (hereafter "paintings") after July 18, 2005.

2. The records must provide the number of paintings sold to each customer, the selling price, and sufficient information about all buyers who bought multiple paintings so that we can contact them, give them an opportunity to disclose their sales and attempt to reach a compromise with them that avoids joining them in this lawsuit.

3. Your client's gross revenue from painting sales establishes the disgorgement component of the prima facie disgorgement claim against Art and Frame Mart. I invite you to provide your client's cost of goods sold and overhead figures that support any argument it will make that gross revenue should be reduced for disgorgement. Because of your client's willful copying

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Date August 5, 2008 ***File Number*** 851-105314-00002

To Jeff LeBlanc

Page 3

and ongoing infringement after notice, we do not concede that any offset against gross revenue should be allowed. But we will certainly consider offsets in an effort to resolve the lawsuit.

We cannot give you a damages demand, even for disgorgement of profits, until we receive this information. This is the fundamental damages discovery that can be provided immediately and very easily from your client's customer sales records. If your client will stipulate to a discovery order setting forth a timetable for making these disclosures promptly, ATI would consider entering into a stipulated order temporarily relieving your client from responding to the complaint. It would allow us to complete this basic discovery so that we can try to settle this lawsuit without expanding the pleadings or suing additional parties.

Tom Ferrell

cc: ATI Industries

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court

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Attorneys for Plaintiff
ATI INDUSTRIES, INC.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ATI INDUSTRIES, INC., Plaintiff, v. ART AND FRAME MART CORPORATION; DOES 1-10; and ROES 1-100, Defendants.	CASE NO. 08-CV-1296 IEG (RBB) **FIRST AMENDED COMPLAINT**

Plaintiff, ATI INDUSTRIES, INC. ("ATI"), by its attorneys, Higgs, Fletcher & Mack, LLP, complains against defendants ART AND FRAME MART CORPORATION ("FRAME MART"), DOES 1-10 ("DOES") and ROES 1-100 ("ROES") as follows:

This is an action for copyright infringement.

THE PARTIES

1. Plaintiff ATI resides in the State of California and is an old and established seller of original oil paintings on canvas in the home décor market. ATI affixes to each painting a Certificate of Authenticity (the "Original Certificate"), which is a unique and original certificate created by ATI's president who designed it to distinguish ATI's name, reputation and its paintings in the marketplace. The Original Certificate enhances the value of the paintings sold by ATI and a portion of

the revenue generated by the sales of paintings is attributable to the Original Certificate's promise of authenticity. ATI obtained a federal copyright registration for its Original Certificate.

2. Defendant FRAME MART is a corporation organized under the laws of California with its principal place of business in Upland, California. FRAME MART is a seller of wall décor and ATI's direct competitor in the sale of original oil on canvas paintings. FRAME MART infringed ATI's copyrights in the Original Certificate by photocopying, reproducing and distributing inferior knock-offs (the "Infringing Certificate") of the Original Certificate. The Infringing Certificate is an exact photocopy of the Original Certificate printed on the same colored, but inferior, paper stock and mimics exactly the Original Certificate. The Original Certificate and the Infringing Certificate pictured together speak for themselves (Exhibit "A"). Defendant FRAME MART has distributed the Infringing Certificate to numerous wholesale, retail and consumer purchasers of paintings throughout the United States, including in this judicial district. FRAME MART also distributes oil paintings with the Infringing Certificate on the worldwide web. On information and belief, defendant's personnel and agents have traveled to and conducted business in this judicial district.

3. Upon information and belief, the DOES are residents of and/or doing business in California and have been copying, reproducing and distributing the Infringing Certificate in this judicial district and in interstate commerce. ATI does not yet know the identities of the various DOES. ATI will amend the Complaint to include the names of these persons or entities and to allege their infringing acts when that information is discovered.

4. Upon information and belief, the ROES are residents of and/or doing business in California and elsewhere and are customers of FRAME MART. The ROE defendants are wholesale and resale distributors and sellers of paintings that they acquired from FRAME MART to which the Infringing Certificates have been

attached. The ROE defendants are infringing ATI's copyrights in the Original Certificate as a result of offering for sale paintings with Infringing Certificates that the ROE defendants obtained from FRAME MART. ATI does not yet know the identities of the ROE defendants, but will identify them in discovery.

JURISDICTION AND VENUE

5. This action for copyright infringement arises under the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.* (the "Copyright Act").

6. This Court has subject matter jurisdiction over ATI's copyright claim pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has personal jurisdiction over FRAME MART because it operates its headquarters in the State of California from which it has distributed the Infringing Certificate and because it delivers goods to customers within this judicial district from its facilities and website.

8. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c) and 1400(a).

FACTS

A. The Original Certificate

9. ATI's president, Richard Guy, created and composed the Original Certificate in 1995. He composed the text, designed the layout of the text, selected the variety of typeface, arranged the text on the page, created the text and appearance of the stamp in the lower right-hand corner, and selected the formal border in order to create a striking and memorable promise of authenticity to affix to the original oil paintings that ATI sells nationwide and worldwide.

10. The Original Certificate employs the repetition of certain words and by its text promises to retailers, consumers and all purchasers of ATI's original oil paintings that "this painting is an original oil painting," "this painting was painted by one artist," "entirely by hand," and verifies "this painting as an Original Hand Painted Oil Painting." In reverse color font, the seal in the lower right-hand corner

bears the inscription "CERTIFICATE AUTHENTICITY" which repeats the title of the certificate contained in the largest and most distinctive wording "Certificate Authenticity." The seal also repeats the key text "Original Hand Painted Oil Painting." The text has cadence and alliteration that is striking and memorable. ATI renders the Original Certificate on heavy, buff-colored card stock paper and affixes it to original hand painted oil canvases that ATI sells in this district and in interstate commerce. ATI's Original Certificate bears the legend - © 2004 in the lower right-hand corner.

11. For more than two decades, ATI has been widely recognized as one of the country's premier sellers of original oil paintings on canvas, each hand painted by a single artist. ATI has built a valuable reputation as a source of original oil paintings that have been executed by one artist entirely by hand. ATI has affixed its distinctive Original Certificate to paintings which have been distributed widely throughout the United States. Retailers, consumers and other purchasers associate the Original Certificate with ATI and it is a valuable statement and assurance of authenticity.

12. Modern methods of mass production and "assembly line" methods of creating wall décor are well known to retailers, consumers and other purchasers of canvas paintings in the wall décor market. Over the years ATI's Original Certificate has helped distinguish ATI's paintings as original and has enhanced the value of ATI's hand painted oil paintings. The Original Certificate has contributed to ATI's sales and profitability.

B. FRAME MART's Access

13. ATI is the exclusive owner of the copyright in the Original Certificate for which the Registrar of Copyrights issued a Registration Certificate No. VA1-626-458 (Exhibit "B").

14. Defendants' access to the Original Certificate cannot be denied. The Court may take notice of the exact replication of the Original Certificate to create

the Infringing Certificate. Defendants had access to the Original Certificate due to its use in the marketplace where ATI and FRAME MART are direct competitors.

15. Agents of FRAME MART have seen the Original Certificate at trade shows attended by both FRAME MART and ATI. FRAME MART owners and managers obtained an Original Certificate, placed it in a photocopy machine, and made numerous Infringing Certificates.

C. FRAME MART's Infringing Conduct

16. FRAME MART has distributed the Infringing Certificate in connection with the sale of oil paintings from its headquarters' location in Upland, California, and has distributed the Infringing Certificate to retailers, purchasers and other consumers in this judicial district and across the United States.

17. FRAME MART has distributed the Infringing Certificate to retailers or resellers in this judicial district and the Infringing Certificate is being used in the sale of FRAME MART's oil paintings in San Diego County.

18. The Infringing Certificate has also been distributed via the sales of oil paintings through FRAME MART's website, located at this uniform resource locator ("URL"): http://artframemart.com/cataloge1.htm.

19. The Infringing Certificate is a photocopy reproduction of the Original Certificate.

20. Customers and consumers have been misled by the defendants' Infringing Certificate to believe that oil paintings offered for sale by defendants were offered by ATI.

21. In January 2008 ATI's president, Richard Guy, witnessed FRAME MART distributing the Infringing Certificate in connection with the sale of oil paintings at an exposition in Atlanta, Georgia. Mr. Guy told FRAME MART's agents that they were infringing ATI's copyrights in the Original Certificate and requested that FRAME MART stop distributing the Infringing Certificate. FRAME MART's agents laughed and refused to stop distributing the Infringing Certificates.

22. The undersigned counsel for ATI wrote a letter on February 8, 2008 to Josef Nazar, President of Art and Frame Mart Corporation, at its address at 521 North Mountain Avenue, Suite E, Upland, California, 91786, demanding that FRAME MART cease and desist from using the Infringing Certificates (Exhibit "C"). The letter sent Mr. Nazar the image of the Original Certificate and the Infringing Certificate in the same form as Exhibit A to this complaint so that the President of Art and Frame Mart would have actual, personal knowledge of the infringing conduct and so that he would have an opportunity to stop it. The United States Postal Service confirmed delivery of the letter to FRAME MART on February 12, 2008. Mr. Nazar and the other Defendants ignored the February 8, 2008 letter and did not respond to it.

23. In February 2008 ATI personnel witnessed FRAME MART prominently displaying the Infringing Certificate in connection with the sale of oil paintings at one of the country's major home furnishing expositions in Las Vegas, Nevada.

24. In May 2008 ATI's personnel witnessed FRAME MART prominently displaying the Infringing Certificate in connection with the sale of oil paintings at one of the country's premier home furnishing expositions in High Point, North Carolina. This is a photograph showing one example of FRAME MART's use of the Infringing Certificate inside its showroom at the High Point home furnishing exposition last May. In this example, FRAME MART prominently displayed the Infringing Certificate on the front, top, left corner of a framed painting of a woman. On information and belief, FRAME MART distributed the infringing certificates to its wholesale and retail customers at the High Point exposition without revealing ATI's copyright claims to its customers, thereby knowingly exposing those customers to liability for copyright infringement.

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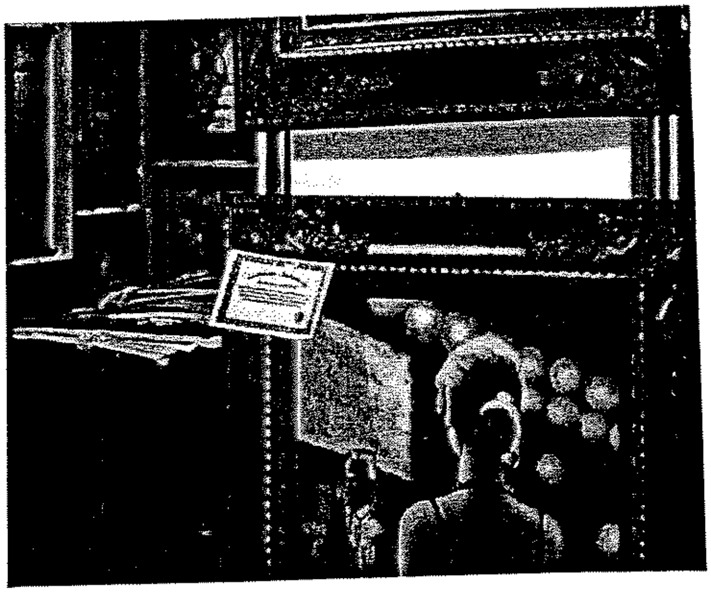

25. FRAME MART is continuing to distribute the infringing certificate via salespersons, internet and other means after receiving the cease and desist letter on February 12, 2008. On information and belief, FRAME MART continues to distribute the infringing certificates to its wholesale and retail customers without revealing ATI's copyright claims to its customers, thereby knowingly exposing those customers to liability for copyright infringement.

D. Defendants' Willfulness

26. Defendants' photocopying the Original Certificate on the same color paper is the product of conscious, deliberate, and willful infringement for profit by defendants.

27. Defendants' conscious business decision to photocopy the Original Certificate to create numerous Infringing Certificates to use in FRAME MART's sales of oil paintings proves FRAME MART's purposeful use of the Original Certificate to increase the value and enhance the marketplace appeal of FRAME MART's oil paintings. Frame Mart's deliberate copying of the Original Certificate and use of Infringing Certificates proves the value of the Original Certificate in the marketplace.

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28. Defendants' continuing willful infringement of ATI's intellectual property rights is proved by its agents' refusal to cease and desist when requested by Richard Guy, and its refusal to respond to the February 8, 2008 cease and desist letter. Defendants have continued their infringing conduct after receiving visual proof and being notified in writing that the Infringing Certificate is a copy of the Original Certificate.

29. ATI served the original complaint on defendant FRAME MART by personal delivery at FRAME MART's corporate offices on July 21, 2008 at 4:50 p.m. The process server personally served Josef Nazar, President of FRAME MART. Mr. Nazar is the same individual that received the cease and desist letter in February 2008.

30. Neither ATI nor its undersigned counsel received any contact from FRAME MART or counsel representing FRAME MART concerning service of the complaint after the complaint was served.

31. FRAME MART and Mr. Nazar are at this moment attending a major home furnishings exposition in Las Vegas, Nevada. Continually since Monday, July 28, 2008, FRAME MART and Mr. Nazar have prominently displayed multiple copies of the Infringing Certificate in its Las Vegas showroom attached to paintings FRAME MART is offering for sale. FRAME MART, with the express knowledge and at the direction of Mr. Nazar, is continuing to infringe ATI's Original Certificate even after Mr. Nazar personally received ATI's complaint on July 21 that explained ATI's rights and the harm caused by FRAME MART's ongoing infringement. On information and belief, FRAME MART is distributing the Infringing Certificates to its wholesale and retail customers at the Las Vegas exposition without revealing ATI's copyright claims to its customers, thereby knowingly exposing those customers to liability for copyright infringement.

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COUNT AGAINST ALL DEFENDANTS

(Copyright Infringement; 17 U.S.C. §§ 101 *et seq.*)

32. Plaintiff repeats and realleges the allegations set forth above in paragraphs 1 through 34.

33. ATI is the exclusive copyright holder of the Original Certificate.

34. Each of the defendants had access to the Original Certificate, as proved by the act of photocopying an Original Certificate to create the Infringing Certificates.

35. ATI did not grant defendants authority to use the Original Certificate. Defendants' infringement of ATI's Original Certificate violates ATI's exclusive rights in the Original Certificate.

36. Each of the defendants knowingly caused, participated in, materially contributed to and derived economic benefit from the infringement of ATI's Original Certificate.

37. Each of the defendants specifically including but not limited to FRAME MART's wholesale and retail customers, has wrongfully profited and continues to profit from its infringement of ATI's Original Certificate. Each of the defendant's infringing conduct has caused and continues to cause actual damages to ATI as well as irreparable injury to ATI in an amount that is not yet known. Unless enjoined and restrained, defendants' infringing conduct will cause further irreparable injury, leaving ATI with no adequate remedy at law.

38. Defendants' continuation of its unlawful conduct after being warned by ATI in person and after receiving the February 8, 2008 cease and desist letter warrants punishment to deter such willful violations of other people's rights.

39. ATI is therefore entitled to injunctive, monetary and other relief, including punitive damages.

WHEREFORE, plaintiff demands a trial by jury pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and seeks judgment:

(a) declaring that each of the defendants has infringed ATI's copyrights in the Original Certificate;

(b) declaring that the defendants have willfully infringed ATI's copyrights in and to the Original Certificate in violation of the Copyright Act;

(c) enjoining each of the defendants, and their respective officers, directors, agents, servants, employees, representatives, attorneys, related companies, successors, assigns, and all others in concert or participation with them, from infringing plaintiff's copyrights in the Original Certificate, or any prior and subsequent versions of it;

(d) ordering the recall and destruction of all copies of the Infringing Certificate in the possession, custody and/or control of defendants;

(e) awarding ATI the actual damages it has sustained as a result of defendants' copyright infringement and awarding ATI all profits derived by defendants including but not limited to FRAME MART's wholesale and retail customers, as a result of their infringing activities pursuant to 17 U.S.C. § 504(b), plus interest on those amounts;

(f) ordering DOE and ROE defendants including but not limited to FRAME MART's wholesale and retail customers, to account for and disgorge to ATI all gains, profits, and advantages derived by their copyright infringement pursuant to 17 U.S.C. § 504(b), plus interest on those amounts;

(g) awarding ATI punitive damages based on the defendants' willful infringement; and

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(h) awarding ATI its costs, attorney's fees, and all other and further relief that the Court deems just and proper.

DATED: July 30, 2008

HIGGS, FLETCHER & MACK LLP

By: [signature]
THOMAS W. FERRELL, ESQ.
Attorneys for Plaintiff
ATI INDUSTRIES, INC.

Confirmation Report – Memory Send

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From	Thomas W. Ferrell	*Tel*	619.595.4235		
Re	*ATI Industries v. Art and Frame Mart Corporation*				

Number of pages with cover page 14

MESSAGE:

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FACSIMILE TRANSMISSION

Date August 6, 2008 ***File Number*** 851-105314-00002

To Jeff LeBlanc ***Fax*** 909.985.7553 ***Tel*** 909.949.2227

From Thomas W. Ferrell ***Tel*** 619.595.4235 *tferrell@higgslaw.com*

Re *ATI Industries v. Art and Frame Mart Corporation*

Number of pages with cover page 4

MESSAGE:

Mr. LeBlanc,

After we spoke on Monday I sent you a copy of the First Amended Complaint by facsimile Tuesday morning. It has already been filed and served on Mr. Nazar. I mentioned by telephone and in my fax that ATI Industries cannot respond to your client's settlement offer without first receiving information about your client's sales that involved the Infringing Certificate. ATI is willing to enter into the attached stipulation that gives Art and Frame Mart an extension of time to respond to the complaint to allow us to focus on the sales and damages information that we need to discuss settlement. Let me know if your client agrees to this extension of time and the informal discovery. Also, please give me your email address so that I can send you original documents more quickly.

Tom Ferrell

cc: ATI Industries

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ATI INDUSTRIES, INC., Plaintiff, v. ART AND FRAME MART CORPORATION; DOES 1-10; and ROES 1-100, Defendants.	CASE NO. 08-CV-1296 IEG (RBB) **STIPULATION AND ORDER**

Plaintiff, ATI INDUSTRIES, INC. ("ATI"), and defendant ART AND FRAME MART CORPORATION ("FRAME MART"), by and through their respective undersigned counsel, hereby stipulate and agree, and respectfully request that this Court order, as follows:

WHEREAS, on July 18, 2008, ATI filed a complaint against FRAME MART for copyright infringement and personally served the complaint FRAME MART's President, Josef Nazar, on July 21;

WHEREAS, the parties have agreed to prioritize early damages discovery and to delay formal pleading in an attempt to reach an early resolution of the issues in dispute on the terms and conditions set forth in this Stipulation and Order;

WHEREAS, the parties have conferred regarding the subject matter of this Stipulation and Order and have agreed to these terms;

NOW THEREFORE, the parties stipulate and agree, and request that this Court order, as follows:

1. Defendant, FRAME MART shall, by no later than 5:00 p.m. (PST) on Friday, August 22, 2008, disclose to ATI's counsel, in writing, the following information, the truth and accuracy of which shall be certified by a duly authorized officer or representative of ATI:

(1) the names and all known address and contact information of (i) any and all entities and/or persons who sold, provided or otherwise supplied the Infringing Certificate (identified in the First Amended Complaint) to FRAME MART, (ii) any and all entities and/or persons that have produced, provided, supplied, manufactured, promoted, distributed, procured, shipped, sold and/or offered for sale copies of the Infringing Certificate for or to FRAME MART, or are presently doing so, (iii) any and all entities and/or persons to whom FRAME MART has supplied, sold, provided, shipped or otherwise transferred the Infringing Certificate, or is presently doing so; and

(2) information sufficient to show (i) per unit sales of paintings supplied, sold, shipped or otherwise transferred with the Infringing Certificate by FRAME MART to each entity and/or person set forth in this paragraph subsection **1.**(1)(iii) above, and (ii) all revenues generated by those sales, shipments or transfers.

2. FRAME MART's time to respond to the First Amended Complaint is extended to Monday, September 1, 2008, or such further time as may be permitted by the Court on motion of the parties.

3. This Stipulation and Order may be executed in counterparts, each of which when executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. This Stipulation may be executed by facsimile and/or scanned signatures.

///

SO STIPULATED:

HIGGS, FLETCHER & MACK LLP

DATED: August___, 2008

By:
THOMAS W. FERRELL, ESQ.
Attorneys for Plaintiff
ATI INDUSTRIES, INC.

DATED: August __, 2008

LAW OFFICES OF JEFF LEBLANC

By:
JEFF LEBLANC, ESQ.
Attorneys For Defendant
ART AND FRAME MART CORPORATION

SO ORDERED.

DATED: August __, 2008

Hon. Irma E. Gonzalez
U.S. DISTRICT COURT JUDGE

Confirmation Report – Memory Send

Page : 001
Date & Time: 08-06-08 04:11pm
Line 1 : +16196961410
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FACSIMILE TRANSMISSION

Date	August 6, 2008	*File Number*	851-105314-00002		
To	Jeff LeBlanc	*Fax*	909.985.7553	*Tel*	909.949.2227
From	Thomas W. Ferrell	*Tel*	619.595.4235	*tferrell@higgslaw.com*	
Re	*ATI Industries v. Art and Frame Mart Corporation*				

Number of pages with cover page 4

MESSAGE:

Mr. LeBlanc,

After we spoke on Monday I sent you a copy of the First Amended Complaint by facsimile Tuesday morning. It has already been filed and served on Mr. Nazar. I mentioned by telephone and in my fax that ATI Industries cannot respond to your client's settlement offer without first receiving information about your client's sales that involved the Infringing Certificate. ATI is willing to enter into the attached stipulation that gives Art and Frame Mart an extension of time to respond to the complaint to allow us to focus on the sales and damages information that we need to discuss settlement. Let me know if your client agrees to this extension of time and the informal discovery. Also, please give me your email address so that I can send you original documents more quickly.

Tom Ferrell

cc: ATI Industries

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THE INFORMATION CONTAINED IN THIS FACSIMILE IS CONFIDENTIAL AND MAY ALSO CONTAIN PRIVILEGED ATTORNEY-CLIENT INFORMATION OR WORK PRODUCT. THE INFORMATION IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHOM IT IS ADDRESSED. IF YOU ARE NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY USE, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THE FACSIMILE IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ADDRESS ABOVE VIA THE U.S. POSTAL SERVICE. THANK YOU.

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL AS SOON AS POSSIBLE.

870311.1

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ATI INDUSTRIES, INC., Plaintiff, v. ART AND FRAME MART CORPORATION; DOES 1-10; and ROES 1-100, Defendants.	CASE NO. 08-CV-1296 IEG (RBB) **STIPULATION AND ORDER**

Plaintiff, ATI INDUSTRIES, INC. ("ATI"), and defendant ART AND FRAME MART CORPORATION ("FRAME MART"), by and through their respective undersigned counsel, hereby stipulate and agree, and respectfully request that this Court order, as follows:

WHEREAS, on July 18, 2008, ATI filed a complaint against FRAME MART for copyright infringement and personally served the complaint FRAME MART's President, Josef Nazar, on July 21;

WHEREAS, the parties have agreed to prioritize early damages discovery and to delay formal pleading in an attempt to reach an early resolution of the issues in dispute on the terms and conditions set forth in this Stipulation and Order;

WHEREAS, the parties have conferred regarding the subject matter of this Stipulation and Order and have agreed to these terms;

NOW THEREFORE, the parties stipulate and agree, and request that this Court order, as follows:

1. Defendant, FRAME MART shall, by no later than 5:00 p.m. (PST) on Friday, August 22, 2008, disclose to ATI's counsel, in writing, the following information, the truth and accuracy of which shall be certified by a duly authorized officer or representative of ATI:

(1) the names and all known address and contact information of (i) any and all entities and/or persons who sold, provided or otherwise supplied the Infringing Certificate (identified in the First Amended Complaint) to FRAME MART, (ii) any and all entities and/or persons that have produced, provided, supplied, manufactured, promoted, distributed, procured, shipped, sold and/or offered for sale copies of the Infringing Certificate for or to FRAME MART, or are presently doing so, (iii) any and all entities and/or persons to whom FRAME MART has supplied, sold, provided, shipped or otherwise transferred the Infringing Certificate, or is presently doing so; and

(2) information sufficient to show (i) per unit sales of paintings supplied, sold, shipped or otherwise transferred with the Infringing Certificate by FRAME MART to each entity and/or person set forth in this paragraph subsection **1.**(1)(iii) above, and (ii) all revenues generated by those sales, shipments or transfers.

2. FRAME MART's time to respond to the First Amended Complaint is extended to Monday, September 1, 2008, or such further time as may be permitted by the Court on motion of the parties.

3. This Stipulation and Order may be executed in counterparts, each of which when executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. This Stipulation may be executed by facsimile and/or scanned signatures.

///

SO STIPULATED:

HIGGS, FLETCHER & MACK LLP

DATED: August___, 2008

By:
THOMAS W. FERRELL, ESQ.
Attorneys for Plaintiff
ATI INDUSTRIES, INC.

DATED: August __, 2008

LAW OFFICES OF JEFF LEBLANC

By:
JEFF LEBLANC, ESQ.
Attorneys For Defendant
ART AND FRAME MART
CORPORATION

SO ORDERED.

DATED: August __, 2008

Hon. Irma E. Gonzalez
U.S. DISTRICT COURT JUDGE

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FACSIMILE TRANSMISSION

Date August 7, 2008 ***File Number*** 851-105314-00002

To Jeff LeBlanc ***Fax*** 909.985.7553 ***Tel*** 909.949.2227

From Thomas W. Ferrell ***Tel*** 619.595.4235 *tferrell@higgslaw.com*

Re *ATI Industries v. Art and Frame Mart Corporation*

Number of pages with cover page 1

MESSAGE:

Mr. LeBlanc,

Thank you for calling me today. I understand that you will no longer represent Art and Frame Mart in this action. On Monday you called me with a settlement proposal.

Please make certain that new counsel receives the pleadings and service papers promptly. Yesterday I sent you a stipulation setting forth the terms on which ATI will agree to extend your client's date to respond to the First Amended Complaint. ATI is willing to move forward quickly toward settlement discussions with informal damages discovery under the Court's supervision. It is always my practice to be accommodating to attorneys when doing so does not disadvantage my clients. But we will not voluntarily delay moving this case along promptly without this type of stipulation, in light of Mr. Nazar's pattern of dismissing the seriousness of ATI's claims out of hand.

Tom Ferrell

cc: ATI Industries

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FACSIMILE TRANSMISSION

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From	Thomas W. Ferrell	*Tel* 619.595.4235	*tferrell@higgslaw.com*
Re	*ATI Industries v. Art and Frame Mart Corporation*		
Number of pages with cover page	1		

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Tom Ferrell

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870486.1

RE: *ATI Industries, Inc. v. Art and Frame Mart Corporation, et al.*

VENUE: United States District Court – Southern District of California

CASE NO.: 08-CV-1296 IEG (RBB)

PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of eighteen (18) years and not a party to the within action; my business address is: 401 West A Street, Suite 2600, San Diego, CA 92101. On August 27, 2008, I served the within documents, with all exhibits (if any):

DECLARATION OF THOMAS W. FERRELL

☐ **(BY ELECTRONIC SERVICE)** I am familiar with the United States District Court, Central District of California's practice for collecting and processing electronic filings. Under that practice, documents are electronically filed with the Court. The Court's CM/ECF system will generate a Notice of Electronic Filing (NEF) to the filing party, the assigned judge, and any registered users in the case. The NEF will constitute service of the document. Registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities.

☒ **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at San Diego, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Joseph Nazar Art and Frame Mart Corporation 521 Mountain Avenue, Unit E Upland, CA 91788	Telephone: (877) 322-2100 Facsimile: (909) 373-0383

Jeff LeBlanc Attorney at Law 1005 N. Centre Ave., Suite 12100 Ontario, CA 91764	Telephone: (909) 949-2227 Facsimile: (909) 985-7553
David Ricks David Ricks & Associates 8600 Utica Avenue, Suite 200 Rancho Cucamonga, CA 91730	Telephone: (909) 481-0100 Facsimile: (909) 481-5858 E-mail: DavidR@ricksassociates.com

I declare that I am employed in the offices of a member of this Court at whose direction the service was made.

Executed on August 27, 2008, at San Diego, California.

Lesli D. Miller
(Print Name)

(Signature)